

## HOUSE BILL No. 2143

By Committee on Financial Institutions

1-24

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9 AN ACT amending the uniform consumer credit code; relating to fi-  
10 nance charges; amending K.S.A. 2004 Supp. 16a-2-201, 16a-2-202 and  
11 16a-2-401 and repealing the existing sections.

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13 *Be it enacted by the Legislature of the State of Kansas:*

14 Section 1. K.S.A. 2004 Supp. 16a-2-201 is hereby amended to read  
15 as follows: 16a-2-201. (1) This section applies only to a closed end con-  
16 sumer credit sale.

17 (2) A seller may ~~charge contract for and receive a finance charge at~~  
18 ~~any rate agreed to by the parties~~ *not to exceed 21% per annum*, subject;  
19 ~~however,~~ to the limitations on prepaid finance charges set forth in sub-  
20 section (3).

21 (3) A seller may charge a prepaid finance charge:

22 (a) For a consumer credit sale secured by a security interest in a  
23 manufactured home as defined by 42 U.S.C. 5402(6), in an amount not  
24 to exceed 5% of the amount financed for the sole purpose of reducing  
25 the interest rate of the consumer credit sale; or

26 (b) for any other consumer credit sale, an amount not to exceed the  
27 lesser of 2% of the amount financed or \$100.

28 (c) A prepaid finance charge permitted under this subsection is in  
29 addition to finance charges permitted under subsection (2). A prepaid  
30 finance charge permitted under this subsection is fully earned when paid  
31 and is nonrefundable, unless the parties agree otherwise in writing.

32 (4) If the sale is precomputed:

33 (a) The finance charge may be calculated on the assumption that all  
34 scheduled payments will be made when due, and the fact that payments  
35 are made either before or after the due date does not affect the amount  
36 of finance charge which the creditor may charge or receive; and

37 (b) the effect of prepayment is governed by subsection (5).

38 (5) Rebate upon prepayment:

39 (a) Except as provided for in this section, upon prepayment in full of  
40 a precomputed consumer credit transaction, the creditor shall rebate to  
41 the consumer an amount not less than the amount of rebate provided in  
42 subsection (b), paragraph (1), or redetermine the earned finance charge  
43 as provided in subsection (b), paragraph (2), and rebate any other un-

1 earned charges including charges for insurance. The rebate for charges  
2 for insurance shall be as prescribed by statute, rules and regulations and  
3 administrative interpretations by the administrator. If the rebate other-  
4 wise required is less than \$1, no rebate need be made.

5 (b) The amount of rebate and redetermined earned finance charge  
6 shall be as follows:

7 (1) The amount of rebate shall be determined by applying, according  
8 to the actuarial method, the rate of finance charge which was required to  
9 be disclosed in the transaction:

10 ~~(i) Where no deferral charges have been made in a transaction, to~~  
11 ~~the unpaid balances for the actual time remaining as originally scheduled~~  
12 ~~for the period following prepayment; and~~

13 ~~(ii) where deferral charges have been made in a transaction, to the~~  
14 ~~unpaid balances for the actual time remaining as extended by deferral for~~  
15 ~~the period following prepayment.~~

16 The time remaining for the period following prepayment shall be either  
17 the full days following prepayment; or both the full days, counting the  
18 date of prepayment, between the prepayment date and the end of the  
19 computational period in which the prepayment occurs, and the full com-  
20 putational periods following the date of prepayment to the scheduled due  
21 date of the final installment of the transaction.

22 (2) The redetermined earned finance charge shall be determined by  
23 applying, according to the actuarial method, the rate of finance charge  
24 which was required to be disclosed in the transaction to the actual unpaid  
25 balances of the amount financed for the actual time the unpaid balances  
26 were outstanding as of the date of prepayment. Any delinquency or de-  
27 ~~ferred~~ charges collected before the date of prepayment do not become a  
28 part of the total finance charge for purposes of rebating unearned charges.

29 (c) Upon prepayment, but not otherwise, of a consumer credit trans-  
30 action whether or not precomputed, other than a consumer lease, a con-  
31 sumer rental purchase agreement, or a transaction pursuant to open end  
32 credit:

33 (1) If the prepayment is in full, the creditor may collect or retain a  
34 minimum charge not exceeding \$5 in a transaction which had an amount  
35 financed of \$75 or less, or not exceeding \$7.50 and in a transaction which  
36 had an amount financed of more than \$75, if the finance charge earned  
37 at the time of prepayment is less than the minimum allowed pursuant to  
38 this subsection.

39 (2) If the prepayment is in part, the creditor may not collect or retain  
40 a minimum finance charge.

41 (d) For the purposes of this section, the following defined terms  
42 apply:

43 (1) "Computational period" means the interval between scheduled

1 due dates of installments under the transaction if the intervals are sub-  
2 stantially equal or, if the intervals are not substantially equal, one month  
3 if the smallest interval between the scheduled due dates of installments  
4 under the transaction is one month or more, and otherwise one week.

5 (2) The “interval” between specified dates means the interval be-  
6 tween them including one or the other but not both of them. If the  
7 interval between the date of the transaction and the due date of the first  
8 scheduled installment does not exceed one month by more than fifteen  
9 days when the computational period is one month, or eleven days when  
10 the computational period is one week, the interval may be considered by  
11 the creditor as one computational period.

12 (e) This section does not preclude the collection or retention by the  
13 creditor of delinquency charges.

14 (f) If the maturity is accelerated by any reason and judgment is ob-  
15 tained, the consumer is entitled to the same rebate as if payment had  
16 been made on the date maturity is accelerated.

17 (g) Upon prepayment in full of a precomputed consumer credit trans-  
18 action by the proceeds of consumer credit insurance, the consumer or  
19 the consumer’s estate is entitled to the same rebate as though the con-  
20 sumer had prepaid the agreement on the date the proceeds of the insur-  
21 ance are paid to the creditor, but no later than ten business days after  
22 satisfactory proof of loss is furnished to the creditor.

23 (6) This section does not apply to a sale of an interest in land. Sub-  
24 section (11) of K.S.A. 16a-2-401, and amendments thereto, governs the  
25 limitations on finance charges for a contract for deed to real estate where  
26 the parties agree in writing to make the transaction subject to the uniform  
27 consumer credit code.

28 Sec. 2. K.S.A. 2004 Supp. 16a-2-202 is hereby amended to read as  
29 follows: 16a-2-202. (1) With respect to a consumer credit sale made pur-  
30 suant to open end credit, a seller may ~~charge~~ *charge contract for and receive a*  
31 *finance charge at any rate agreed to by the parties not to exceed 21% per*  
32 *annum.*

33 (2) A charge may be made in each billing cycle which is a percentage  
34 of an amount no greater than:

35 (a) The average daily balance of the account, which is the sum of the  
36 actual amounts outstanding each day during the billing cycle divided by  
37 the number of days in the cycle;

38 (b) the unpaid balance of the account on the last day of the billing  
39 cycle.

40 (3) If the billing cycle is monthly, the charges may not exceed  $\frac{1}{12}$  of  
41 the annual rate agreed to by the consumer. If the billing cycle is not  
42 monthly, the maximum charge is that percentage which bears the same  
43 relation to the applicable monthly percentage as the number of days in

1 the billing cycle bears to 30. For purposes of this subsection, a variation  
2 of not more than four days from month to month is “the last day of the  
3 billing cycle.”

4 (4) For any period in which a finance charge is due, the parties may  
5 agree on a minimum amount.

6 (5) This section does not apply to a sale of an interest in land. Sub-  
7 section (11) of K.S.A. 16a-2-401, and amendments thereto, governs the  
8 limitations on finance charges for a contract for deed to real estate where  
9 the parties agree in writing to make the transaction subject to the uniform  
10 consumer credit code.

11 Sec. 3. K.S.A. 2004 Supp. 16a-2-401 is hereby amended to read as  
12 follows: 16a-2-401. (1) For any consumer loan incurred pursuant to open  
13 end credit, including, without limitation, a loan pursuant to a lender credit  
14 card, a lender may charge ~~contract for and receive~~ a finance charge ~~at~~  
15 ~~any rate agreed to by the parties~~ *not to exceed 21% per annum*, subject,  
16 ~~however,~~ to the limitations on prepaid finance charges set forth in sub-  
17 section (6). This subsection does not apply to a consumer loan secured  
18 by a first mortgage or a second mortgage.

19 (2) For any consumer loan incurred pursuant to closed end credit, a  
20 lender may charge a periodic finance charge, calculated accordingly to  
21 the actuarial method, not to exceed: (a) 36% per annum on the portion  
22 of the unpaid balance which is \$860 or less, and (b) 21% per annum on  
23 the portion of the unpaid balance which exceeds \$860, subject, however  
24 to the limitations on prepaid finance charges set forth in subsection (6).  
25 This subsection does not apply to a consumer loan secured by a first  
26 mortgage or a second mortgage.

27 (3) For any consumer loan secured by a second mortgage or a con-  
28 sumer loan secured by an interest in a manufactured home as defined by  
29 42 U.S.C. 5402(6), a lender may charge a periodic finance charge, cal-  
30 culated according to the actuarial method, not to exceed 18% per annum,  
31 subject, however to the limitations on prepaid finance charges set forth  
32 in subsection (6). This subsection does not apply if the lender and the  
33 consumer agree in writing that the finance charge for the loan is governed  
34 by K.S.A. 16-207(b), and amendments thereto.

35 (4) If the parties to a consumer loan secured by a first mortgage or  
36 a consumer loan secured by an interest in a manufactured home as de-  
37 fined by 42 U.S.C. 5402(6) agree in writing to make the transaction sub-  
38 ject to the uniform consumer credit code, then the periodic finance  
39 charge for the loan, calculated according to the actuarial method, may  
40 not exceed 18% per annum, subject, however to the limitations on pre-  
41 paid finance charges set forth in subsection (6).

42 (5) This section does not limit or restrict the manner of calculating  
43 the finance charge, whether by way of add-on, discount or otherwise, so

1 long as the rate and the amount of the finance charge does not exceed  
2 that permitted by this section.

3 (6) Prepaid finance charges on consumer loans are limited as follows:

4 (a) For a consumer loan secured by a first mortgage or a second  
5 mortgage, or a consumer loan secured by an interest in a manufactured  
6 home as defined by 42 U.S.C. 5402(6), prepaid finance charges in an  
7 amount not to exceed 8% of the amount financed may be charged, pro-  
8 vided that the aggregate amount of prepaid finance charges payable to  
9 the lender or any person related to the lender do not exceed 5% of the  
10 amount financed; and

11 (b) for any other consumer loan, prepaid finance charges in an  
12 amount not to exceed the lesser of 2% of the amount financed or \$100  
13 may be charged.

14 Prepaid finance charges permitted under this subsection are in addition  
15 to finance charges permitted under subsection (1), (2), (3) and (4), as  
16 applicable. Prepaid finance charges permitted under this subsection are  
17 fully earned when paid and are non-refundable, unless the parties agree  
18 otherwise in writing.

19 (7) The finance charge limitations in subsections (3) and (4) do not  
20 apply to a consumer loan the finance charge for which is governed by  
21 subsection (h) of K.S.A. 16-207, and amendments thereto.

22 (8) If a loan secured by a first mortgage constitutes a “consumer loan”  
23 under subsection (17) of K.S.A. 16a-1-301, and amendments thereto, by  
24 virtue of the loan-to-value ratio exceeding 100% at the time the loan is  
25 made, then the periodic finance charge for the loan shall not exceed that  
26 authorized by subsection (b) of K.S.A. 16-207, and amendments thereto,  
27 but the loan is subject to the limitations on prepaid finance charges set  
28 forth in paragraph (a) of subsection (6), which prepaid finance charges  
29 may be charged in addition to the finance charges permitted under sub-  
30 section (b) of K.S.A. 16-207, and amendments thereto.

31 (9) If, within 12 months after the date of the original loan, a lender  
32 or a person related to the lender refinances a loan with respect to which  
33 a prepaid finance charge was payable to the same lender pursuant to  
34 subsection (6), then the following apply:

35 (a) If a prepaid finance charge with respect to the original loan was  
36 payable to the lender pursuant to paragraph (a) of subsection (6), then  
37 the aggregate amount of prepaid finance charges payable to the lender  
38 or any person related to the lender with respect to the new loan may not  
39 exceed 5% of the additional amount financed.

40 (b) If a prepaid finance charge with respect to the original loan was  
41 payable to the lender pursuant to paragraph (b) of subsection (6), then  
42 the aggregate amount of prepaid finance charges payable to the lender  
43 or any person related to the lender with respect to the new loan may not

1 exceed the lesser of 2% of the additional amount financed or \$100.

2 (c) For purposes of this subsection, “additional amount financed”  
3 means the difference between: (i) The amount financed for the new loan,  
4 less the amount of all closing costs incurred in connection with the new  
5 loan which are not included in the prepaid finance charges for the new  
6 loan; and (ii) the unpaid principal balance of the original loan.

7 (10) For any period in which a finance charge is due on a consumer  
8 loan pursuant to open end credit, the parties may agree on a minimum  
9 amount.

10 (11) If the parties to a contract for deed to real estate agree in writing  
11 to make the transaction subject to the uniform consumer credit code,  
12 then the transaction is subject to the same limitations as set forth in  
13 subsections (4) and (6) for a consumer loan secured by a first mortgage.

14 (12) This section does not apply to a payday loan governed by K.S.A.  
15 16a-2-404, and amendments thereto.

16 Sec. 4. K.S.A. 2004 Supp. 16a-2-201, 16a-2-202 and 16a-2-401 are  
17 hereby repealed.

18 Sec. 5. This act shall take effect and be in force from and after its  
19 publication in the statute book.